

VZCZCXRO7294  
PP RUEHBZ RUEH DU RUEHGI RUEHJO RUEHMR RUEHRN  
DE RUEH KI #0440 1400601  
ZNR UUUUU ZZH  
P 190601Z MAY 08  
FM AMEMBASSY KINSHASA  
TO RUEHC/SECSTATE WASHDC PRIORITY 8010  
INFO RUEHXR/RWANDA COLLECTIVE  
RUCNSAD/SOUTHERN AF DEVELOPMENT COMMUNITY COLLECTIVE  
RUEAIIA/CIA WASHDC  
RHEFDIA/DIA WASHDC  
RHMFISS/HQ USEUCOM VAIHINGEN GE  
RUZEJAA/JAC MOLESWORTH RAF MOLESWORTH UK

UNCLAS KINSHASA 000440

SENSITIVE  
SIPDIS

E.O. 12958; NA  
TAGS: [PHUM](#) [PGOV](#) [KDEM](#) [CG](#)  
SUBJECT: FREEDOM OF ASSEMBLY: THEORY VS. PRACTICE

¶1. (SBU) Summary: Articles 25 and 26 of the 2006 DRC Constitution guarantee freedom of assembly for peaceful meetings and protests. Congolese authorities often take advantage of differences between the Constitution and existing law to prevent or suppress public protests. The Embassy is working with the Konrad Adenauer Foundation, a German NGO, to encourage Parliament to develop enabling legislation to bridge this legal gap. End summary.

¶2. (U) Congolese Senators and National Assembly Deputies participated in a three-day conference on Freedom of Association and Protest March 17-19 at Parliament. The parliamentarians reached consensus regarding the importance of closing the gap between the Constitution and existing law governing freedoms of association and protest. They were unable to reconcile views on how best to balance unlimited freedoms with reasonable restrictions.

¶3. (U) During the discussion of freedoms and restrictions, Jean-Louis Esambo, a constitutional expert and Acting Prosecutor-General for the Kinshasa-Gombe Court of Appeal made a key observation: Congolese authorities often view public protests as acts of insurrection and threats to public order. He said peaceful protest should in fact be seen as a product of the freedom of expression. He called for changing the mentality of government officials, police, and public on the meaning of peaceful protest and its role in a developing democracy.

¶4. (U) Article 25 of the Constitution guarantees freedom of assembly for all peaceful meetings, provided participants respect the law, public order, and good morals. Most meetings in the DRC are held in private spaces. Actions by authorities to disrupt or otherwise break up meetings are not common.

¶5. (U) In practice, current Congolese law restricts freedom of protest. Article 26 of the Constitution guarantees freedom to protest, provided organizers inform appropriate authorities in writing of their plans in accordance with application procedures established by law. However, Parliament has yet to adopt legislation to implement these procedures. Legal restrictions enacted prior to the current constitution remain in force even if in conflict with it.

¶6. (U) Authorities often take advantage of the gap between the theory of the 2006 Constitution and established practices based on existing law to deny or disrupt public protests. Decree 196 of January 29, 1999, the law currently governing public protests, provides authorities three to five days to approve or deny an application. It also requires protests to respect public order and good morals, but provides no guidance on determining the appropriate approval period.

¶7. (U) Eve Bazaiba and Ekombe Mpetshi, presidents respectively of the Senate's Socio-Cultural and Political, Administrative and Legal Committees, told us during the week of April 22 that restrictive laws must be updated before 2009 provincial elections. They

appealed for assistance to fund a small group of technical experts to aid the committees in drafting the enabling legislation.

¶8. (SBU) Comment: Government infringement of the right to peaceful protest is a regular theme in the annual human rights report on the DRC. Closing the legal gap between current law and the Constitution will be an important step in the DRC's democratic transition. PolOff and representatives of the Konrad Adenauer Foundation plan to meet with other key parliamentarians in the coming weeks to gauge their views on updating these and other civil rights laws. End comment.

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